IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2969 of 1991
WITH
SPECIAL CIVIL APPLICATIONS No.7640/90,
7645/90, 973/91, 2012/91, 2055/91, 358/92,
471/92, 476/92, 5257/92, 7849/92 & 11265/93,

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHBHAI SOMABHAI PATEL
Versus
STATE OF GUJARAT

Appearance:
Special Civil Application No. 2969 of 1991
MR MUKESH R SHAH for Petitioner
Mr.K.P. Raval, ASSTT GOVERNMENT PLEADER for Respondent No. 1
RULE SERVED for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 19/01/2001

COMMON ORAL JUDGEMENT

The present petitions are filed by the petitioners claiming to be eligible for appointment as teachers in primary and secondary schools on the basis of possessing the certificate of Physical Education (C.P. Ed.). It is the case of the petitioners that because they have obtained that C.P. Ed. qualification from Bharatiya Sharirik Prashikshan Mahavidyalaya, Amravati run by Hanuman Vyayamshala Prasarak Mandal, Amravati, which is not recognised for the purpose of appointment in the schools of Gujarat State. That the authorities did not consider them eligible for being continued as teachers.

2. It is the case of the petitioners that they have passed SSC examination and after that they completed ATD course and then they joined the aforesaid institution for C.P.Ed., which is a recognised school for the purpose of conducting C.P.Ed. course by the Director of Sports & Youth Service, Maharashtra State. The petitioners have obtained C.P.Ed qualification from Bharatiya Sharirik Prashikshan Maha Vidyalaya, Amravati in the year 1988. As the schools in Gujarat were in need of teachers in the subject of Physical Education, the petitioners applied for such posts and on the basis of their qualification of SSC, ATD, C.P.Ed. after appearing for selection were selected and were given appointment in the year 1988. It is the case of the petitioners that respective schools submitted their pay bills for salary under 'direct payment scheme' to the Education Department. The Department did not approve their appointment on the ground that C.P.Ed. qualification possessed by the petitioners is not from a recognised institution. As the State of Gujarat has not recognised that institution the petitioners approached the Gujarat Secondary Education Tribunal by filing various applications. So far as Special Civil Application No.2969 of 1991 is concerned, the petitioner had filed an application bearing No.523 of 1989 before the Tribunal challenging the action of the respondents of withholding the salary of the petitioner. It is the case of the petitioner in Special Civil Application No.2969 of 1991 that the Tribunal has partly allowed the application of the petitioner and directed the opponents to pay salary to the petitioner with effect from the date of his appointment, i.e. 1.7.1989 till 31.1.1990. The Tribunal was also pleased to direct that salary of the petitioners for the aforesaid period shall be held admissible for the purpose of grant, but for the subsequent period the Tribunal held that on the basis of the Circular issued by the Govt. to the effect that the

teacher who has completed C.P.Ed. from Bharatiya Sharirik Prashikshan Mahavidyalaya, Amravati shall not be considered for the post of teacher in the State of Gujarat and directed the school management not to pay salary to the petitioners which shall not be admissible for the purpose of grant as per the Circular issued by the Govt. Being aggrieved of that judgement and order of the Tribunal that the present Special Civil Application No.2969 of 1991 is preferred which is heard along with other cognate matters.

3. In this petition (Special Civil Application No.2969 of 1991), the Govt. Circulars dated 29.12.1980 and 25.9.1989 are challenged. The petitioner has set out in the petition that the State of Gujarat is exercising control and regulating on the process of appointment as also the qualifications for the teachers to be appointed in the primary schools run under District School Board, Municipal School Board or Panchayats and also by private bodies. Respondent no.2, Director of Education is the officer in charge of administration of primary as well as secondary schools. It is also set out in the petition that Physical Education is taught as a compulsory subject in primary schools as well as secondary schools and therefore, the schools are required to recruit teachers possessing requisite qualifications for imparting instructions in the subject of physical education. The requisite qualifications for recruitment of Physical Education teachers have been laid down as far as the primary schools are concerned by the recruitment rules issued by the Panchayat and Health Department of the State of Gujarat. As it is provided in the rules, a person is to possess qualification of SSC and Certificate course in Physical Education. It is further stated in the petition that in the year 1978, statutory regulations were framed under the Secondary Education Act, 1972 and as per Regulation 20(8), SSC, C.P. Ed. is the required qualification for being appointed as a trained Physical Education Teacher. For ready perusal said Regulation 20(8) is reproduced hereinbelow :

"20(8) No person shall be appointed as Physical Instructor unless he --

(a) has attained the age of 18 years and
(b) possesses --

(i) Matriculation or SSC with one year's certificate course in Physical Education.
OR
(ii) A degree in any faculty of any University

in India established by law and a Diploma in Physical Education or any Diploma equivalent thereto recognised by the Board."

4. What is important to note is that it is specifically provided in clause (ii) of the said Regulation that a degree in any faculty of any University in India established by law and a Diploma in Physical Education or any Diploma equivalent thereto recognised by the Board. (Emphasis supplied)

5. It is also stated in the petition that the petitioners are holding Diploma from said Bharatiya Sharirik Prashikshan Mahavidyalaya, Amravati and that the petitioners are in difficulty by virtue of Circulars dated 29.12.1980 and 25.9.1989.

6. Learned Assistant Govt. Pleader, Mr.K.P. Raval pointed out that an affidavit in reply is filed by Mr.P.F. Pargi, District Education Officer, Nadiad. In paras 5 to 7 of the said affidavit in reply filed in Special Civil Application No.2969 of 1991 is is stated that,

"5. .. .. ..

I further say that Hanuman Vyayam Pracharak Mandal, Amravati which is not recognised for the purpose of appointment in the schools of the Gujarat State vide Circular of Education Department, Sachivalaya, G'nagar. Its G.R. No.SRS 1080 EM 263 CH dated 29.12.80. A copy of the GR attached herewith marked as Annexure 'A' to this reply. I further say that in the case of C.P. Ed. course of Maha Vidyalaya the institution is run by the private body namely Hanuman Vyayam Pracharak Mandal and the examination is conducted by Director of Sports and Youth Services and not by the Govt. of Maharashtra.

6. I further say and submit that the Govt. of Maharashtra by its letter dt.20.7.1977 on prescription of certain condition.

1. The course should be open only to the candidates from State other than the State of Maharashtra.

2. There should be no cost to Govt.

on an account of this course.

3. The permission is only for 3 years during which period the Mandal should form an autonomous body as proposed by it or make any other arrangements and take up responsibility of this course on its own if it is to be continued by the Mandal.

4. The administrative expenditure which the Director of Sports and Youth Services, Maharashtra State, Pune has to incur on account of.

7. I further say and submit that this course should be borne by the Mandal, all other conditions mentioned in Govt. letter Education & Social Welfare Deptt No.PHE 1369/593/ C, dt.11.8.1969 should be abided by which are reproduced below.

1. The Hanuman Vyayam Pracharak Mandal will not be eligible for any kind of financial assistance from the State Govt. for conduction the C.P. Ed. course.

2. The examination of the C.P. Ex. course will be conducted by the Director of Sports and Youth Services, Maharashtra State, Pune as before provided the cost on account of holding such examination. A copy of letter of Govt. of Maharashtra, dt.26.7.1977 attached herewith marked as ANNEXURE 'B' to this reply."

7. Mr.Raval, learned AGP also invited attention to the aforesaid two Circular dated 28.12.1980 and 25.9.1989 wherein specific reasons are set out as to why C.P. Ed. qualification from Hanuman Vyayam Prasarak Mandal is not considered fit to be recognised by the State. It is important to be noted that said qualification is not recognised by the State of Maharashtra for the schools situated in that State. Not only that it is also interesting to note that the said institution is kept open only for the candidates/ students from outside Maharashtra State and for students/ candidates of Maharashtra State, the qualification of that institute is not recognised. It is further noted in the said circular that the Govt. is not bearing any expenses for the said institution. Not only that the examination is also conducted by the Director of Sports and Youth Services, Maharashtra State, Pune at the cost of the institution.

In such a situation this Court finds no reason for which the decision of the State can be said to be vitiated. There is no unreasonableness on the part of the State of Gujarat in not recognising that qualification in the State of Gujarat. It is something surprising that an institution run in the State of Maharashtra, conducting course only for the outside candidates and not for the candidates belonging to the State of Maharashtra. The Govt. of Maharashtra does not consider the said qualification worth recognising for the schools situated in the State of Maharashtra. (emphasis supplied)

8. Mr.Shah, learned advocate for the petitioners submitted that the Court may look into the papers of Special Civil Application No.7645 of 1990 wherein relevant circulars are produced. Mr. Shah submitted that the Circular issued by the Govt of India dated 4.6.1982 is produced at Annexure 'A' in that Application. On perusal it is found that one Shri S.L. Anand, Under Secretary to the Govt. of India, addressed to the Educational Secretaries of all the State Governments/ Union Territories and subject is, "physical education teachers, training institutions -recognition of diploma/ certificate courses". The submission of Mr.Shah is that by said letter/ circular the Govt. of India has recognised the certificate issued by Bhartiya Shareerik Prashikshan Mahavidyalaya, Amravati, run by Hanuman Vyayam Pracharak Mandal, Amravati. Said circular says that the diploma and/ or certificate courses of the institutions mentioned therein, as noted against each may be recognised by the Govt. of India. In that item no.3 pertains to Bhartiya Shareerik Prashikshan Mahavidyalaya. The certificate mentioned against it is "Higher Grade (Post Matriculate) Certificate in Physical Education, Higher Grade & Lower Grade (Post Matriculate) Certificate & Diploma in Physical Education. Mr.Shah, learned advocate invited attention of the Court to the concluding part of the said Circular which says that,

> "The above recommendations of the Central Advisory Board, Physical Education have been accepted by the Govt. of India. .. .."

A pertinent query was put to Mr.Shah, as to whether he has any material to show that the certificate course in question is recognised by the Govt. of India. The reply of Mr.Shah is little surprising. He said that the Govt. of Gujarat for the first time issued a circular dated 29.12.1980, a copy of which is produced at Annexure 'A' to the reply filed by respondent no.2 in Special Civil Application No.2969 of 1991, page 39 of the compilation.

In that circular it is stated that the certificate course of the said institution, namely, Bharatiya Sharirik Prashikshan Mahavidyalaya, Amravati run by Hanuman Vyayam Prasarak Mandal, Amravati is not recognised, therefore, according to learned counsel it should be held by this Court that till that date the certificate course in question be deemed to have been recognised by the Govt. of Gujarat. I am afraid this submission of Mr.Shah cannot be accepted by a court of law. It is well settled legal position that if the petitioners have come forward with a case that a particular course is recognised by a particular authority it is for the petitioners to establish that. From the fact that the State of Gujarat has issued a circular in the year 1980 to say that the certificate course in question is not recognised, by no stretch of imagination it can lead to a conclusion that prior to 1980 the said certificate course stood recognised by the State of Gujarat. Yes, the submission of Mr.Shah could have some force if the Circular of 1990 was for derecognising that certificate course.

9. Mr.Shah, learned counsel has next submitted that the circular dated 29.12.1980 of the State of Gujarat has been issued on misinterpretation of the letter dated 26.7.1977, a copy of which produced at Annexure 'B' to Special Civil Application 2969 of 1991. This letter 1977 is purported to have been written by the "Special Welfare Cultural Affairs, Sports & Tourism Department, Mantralaya Annexe, Bombay, it is addressed to Shri P.A. Vaidya, Hon. General Secretary, Shree Hanuman Vyayam Prasarak Mandal, Amravati on the subject, "C.P. Ed. Course run by Hanuman Vyayam Prasarak Mandal, Amravati continuance of." The first para of the letter is as under :

> "I am directed to refer to your letter no.136 dated 25.6.77 on the subject mentioned and to state that Government is pleased to allow your Mandl as a special case to continue the E.P.Ed. course for 3 years, i.e. 1977-- 78, 1978-- 79 and 1979-- 80 on the following conditions:
>
> (i) The course should be open only to the candidates from states other than the State of Maharashtra. (emphasis supplied)
>
> .. .. "

Mr.Shah submitted that the Govt. of Gujarat while issuing circular dated 29.12.1980 ought to have read this circular as having granted recognition to the certificate course of the institute in question. Mr.Shah also wants

this Court to believe that C.P.Ed. course of Bhartiya Shareerik Prashikshan Mahavidyalaya, Amravati, run by Hanuman Vyayam Pracharak Mandal, Amravati, is allowed to continue beyond the period mentioned in that letter though the period of three years mentioned in this letter. Mr.Shah is not able to point out any material on the record which will show that the said permission is extended and continued beyond 1978-- 79. It is also to be noted that the subject clause of the letter, has the phrase, "continuance of". Meaning thereby that if it is the contention of Mr.Shah that the said course was continued to be allowed beyond the period mentioned in the letter by the State of Maharashtra, Mr.Shah should have produced relevant material in support thereof. The submission of Mr.Shah is that the State of Gujarat has committed an error in not recognising the certificate course in question, which is required to be corrected by this Court while exercising extraordinary jurisdiction under Article 226 of the Constitution of India. The condition imposed by the State of Maharashtra in the aforesaid letter of keeping that course open only to the candidates from the States other than the State of Maharashtra be not treated as a negative factor, but it should be treated as a student friendly gesture, giving an opportunity to the candidates who are not belonging to the State of Maharashtra.

10. The court put a pertinent query as to whether Mr.Shah is able to support the said contention by any logical reason in favour of the same, Mr.Shah stated that as far as his information goes, though the State of Maharashtra has kept the admission open for the candidates outside the State of Maharashtra, it has recognised that certificate course for giving employment in the State of Maharashtra. Mr.Shah is not able to substantiate the same by pointing out any material in support thereof. Not only that Mr.Shah also submitted that by virtue of the Circular of the Govt. of India dated 4.6.1962 all other states and the Govt. of India have recognised the certificate mentioned in that circular of the institute concerned for the purpose of giving employment. Even if it is so, then also it cannot be of any help to Mr.Shah inasmuch as the question which is posed before the Court is as to when a particular qualification is not recognised by the State of Gujarat, the petitioners who possessed said qualification can be continued in service. The answer is emphatically "NO".

11. Except the contentions discussed hereinabove, Mr.Shah has not urged any other point.

12. Mr.Shah, learned counsel lastly submitted that during the period for which these matters have remained pending, number of petitioners have procured/ obtained other qualifications, on the basis of which they may be continued in service. The question with which for the present the Court is concerned is, "about continuance of the petitioners in service on the basis of the qualification in question". This Court is not pronouncing anything on this submission of Mr.Shah.

13. However, it is made clear that rejection of these petitions shall not be considered as to have said that the petitioners if otherwise qualified for the employment cannot be continued in employment only because these petitions are rejected by this Court.

14. On the contrary it is made clear that if these petitioners have continued in service, may be by virtue of the order of this Court since 1990 and during the pendency of these petitions, if they have acquired any other qualification(s) which according to the State authorities is sufficient to continue them in service this rejection shall not come in their way. It will be open for the authorities to consider their case in light of those acquired qualifications.

15. In view of this, the relief sought for by the petitioners, namely direction for quashing and setting aside the action of the respondents of not considering the petitioners as eligible for appointment as teachers only because they have passed C.P.Ed. course from Hanuman Vyayam Pracharak Mandal, Amravati, Maharashtra State and further direction to the respondents to consider the case of the petitioners by virtue of the certificate of C.P.Ed. cannot be granted.

16. These petitions, therefore, fail. All the petitions stand dismissed. Rule is discharged. Interim relief is vacated. No order as to costs.

(Ravi R. Tripathi, J.)

karim